

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALYSSA SERRANO,

Plaintiff,

v.

FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Defendant.

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CIVIL ACTION H-18-2149

ORDER

Pending before the court is (1) a memorandum and recommendation (“M&R”) filed by Magistrate Judge Nancy K. Johnson (Dkt. 34) and (2) plaintiff Alyssa Serrano’s Notice of Nonsuit (Dkt. 36). The M&R considered several motions filed by both Serrano and defendant Federal Home Loan Mortgage Corporation (“FHLMC”).¹ Serrano filed the Notice of Nonsuit after Judge Johnson filed the M&R.

If a plaintiff moves to voluntarily dismiss after the defendant has answered, it must first receive the court’s consent. Fed. R. Civ. P. 41(a)(2). The Fifth Circuit has explained that, “as a general rule, motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *United States ex rel. Vaughn v. United Biologics, L.L.C.*, 907 F.3d 187, 196–97 (5th Cir. 2018) (quoting *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002)). The “purpose of the grant of discretion under Rule 41(a)(2) . . . is primarily to prevent voluntary dismissals which unfairly affect

¹The M&R considered: (1) FHLMC’s motion to dismiss (Dkt. 3); (2) Serrano’s motion for remand (Dkt. 10); (3) Serrano’s motion for preliminary injunction (Dkt. 7); (4) Serrano’s unopposed motion to modify the scheduling order and join a party (Dkt. 26); and (5) Serrano’s motion to reconsider the denial of motion to extend time to amend pleading (Dkt. 33). Dkt. 34.

the other side[.]” *Id.* “Absent such a showing or other ‘evidence of abuse by the movant,’ the motion should be granted.” *Id.*

Here, Defendants have not objected to the Notice of Nonsuit. Additionally, based on the record, the court finds that FHLMC would not suffer legal prejudice if the court granted Serrano’s voluntary dismissal. Although FHLMC has appeared, Serrano filed the notice of nonsuit approximately six months after the case was removed to federal court, and before the parties began discovery. Accordingly, Serrano’s Notice of Nonsuit (Dkt. 36) is GRANTED. Serrano’s claims against FHLMC are DISMISSED WITHOUT PREJUDICE. Because Serrano is dismissing her claims against FHLMC, the M&R (Dkt. 34) is SET ASIDE AS MOOT.

Signed at Houston, Texas on February 7, 2019.

A handwritten signature in black ink, appearing to read 'Gray H. Miller', is written over a horizontal line.

Gray H. Miller
Senior United States District Judge